



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 19, 2003

Ms. Sylvia F. Hardman
Deputy Commissioner for Legal Services
Texas Rehabilitation Commission
Office of the General Counsel
4900 North Lamar Blvd.
Austin, Texas 78751-2399

OR2003-8303

Dear Ms. Hardman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 191257.

The Texas Rehabilitation Commission (the "commission") received a request for all information relating to the requestor's criminal background check. You claim that the requested information is excepted from disclosure in whole or in part under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 111.058 of the Human Resources Code pertains to criminal conviction record information obtained by the commission and provides as follows:

(a) The commission may obtain criminal conviction record information from the pardons and paroles division of the Texas Department of Criminal Justice and from the Texas Department of Public Safety if the conviction records relate to:

- (1) an applicant selected for employment with the commission;
- (2) an applicant for rehabilitation services; or
- (3) a client of the commission.

(b) The pardons and paroles division and institutional division of the Texas Department of Criminal Justice and the Texas Department of Public Safety upon request shall supply to the commission criminal conviction record information relating to applicants selected for employment with the commission, applicants for rehabilitation services, or clients of the commission. *The commission shall treat all criminal conviction record information as privileged and confidential and for commission use only.*

Hum. Res. Code § 111.058 (emphasis added). *See also* Hum. Res. Code § 111.0581(b) (providing that criminal history record information (“CHRI”) is confidential and for commission use only); Gov’t Code § 411.117 (providing for access by commission to CHRI maintained by Department of Public Safety (“DPS”)); *id.* § 411.084 (CHRI obtained from DPS pursuant to statute is also confidential and may only be disclosed in very limited instances). Therefore, to the extent that the commission possesses information encompassed by section 111.058 of the Human Resources Code, such information must be withheld under section 552.101 of the Government Code.¹

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental

¹ We note that the requestor can obtain her own CHRI from DPS. Gov’t Code § 411.083(b)(3).

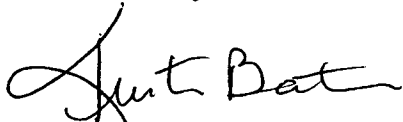
body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Kristen Bates", written in a cursive style.

Kristen Bates
Assistant Attorney General
Open Records Division

KAB/lmt

Ref: ID# 191257

Enc. Submitted documents

c: Ms. Annette Davis
2009 Pinehill Dr. E.
Pearland, TX 77581
(w/o enclosures)